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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,112	10/19/2001	Jeffrey A. Gariepy	Q01-1037	2878

7590

01/15/2004

Robert A Saltzberg  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105

EXAMINER
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KLIMOWICZ, WILLIAM JOSEPH

ART UNIT	PAPER NUMBER
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2652

DATE MAILED: 01/15/2004

16

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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16

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Commissioner for Patents

See attachments

WJK

William J. Klimowicz  
Primary Examiner  
Art Unit: 2652

*Non-Responsive Amendment/Response*

On November 24, 2003 (Office receipt date) - (Certificate of Mailing November 19, 2003) the Applicants filed a response to the Examiner's restriction requirement (Paper No. 13, mailing date of October 28, 2003).

In the restriction requirement (Paper No. 13), the Examiner set forth two separate and distinctly claimed (and distinctly disclosed) Species I and II, drawn to a transport assembly having a cartridge mover including a pass-through assembly and a transport assembly having a cartridge mover including at least one gripper, respectively.

As set forth in Applicants' original disclosure, such two embodiments are disclosed as exclusive and distinct. Additionally, the Examiner had required the Applicants to choose among two Subspecies IIa and IIb if Applicants chose to elect Species II (see Paper No. 13).

The Applicants' response filed on November 24, 2003 (Paper No. 15), included an election of Species II and Subspecies IIa (see page 2 of Paper No. 15).

The Applicants, however, failed to identify which claims read on the elected Species (and Subspecies). While Applicants state that all pending claims 22-61 read on the elected embodiment, clearly this is not the case. It appears that the Applicants are alleging that the two distinctly and exclusively disclosed embodiments can somehow be joined together (i.e., as set forth by the Applicants, "in theory") that such a hypothetical and undisclosed hybrid embodiment would encompass all the pending claims. For example, see page 3 of Applicants' response (Paper No. 15), which reads in part:

In other words, because the cartridge gripper disclosed in the specification can be used to move cartridges to and/or from a plurality of transport receivers, in theory, a first transport receiver can use a gripper, and a second transport receiver can use a pass-through assembly. Consequently, all of the claims are generic.

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The Examiner maintains that the Applicants' disclosure is inconsistent with Applicant's hindsight construction of a hybrid embodiment that fully encompasses two exclusively disclosed transport assemblies. Thus, since the claims cannot in any way, shape or form be construed as generic, and since the claims clearly include claims which are exclusively drawn to one embodiment or the other, the Applicants' response is deemed non-responsive.

Applicant is again requested to provide a "listing of all claims readable" on the elected embodiment. Applicants should further identify any claims considered generic.

### *Conclusion*

Thus, the reply filed on November 24, 2003 (Paper No. 15) is not fully responsive to the prior Office Action because of the matters set forth, *supra*. See 37 CFR 1.111.

Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William J. Klimowicz whose telephone number is (703) 305-3452. The examiner can normally be reached on Monday-Thursday (6:30AM-5:00PM).

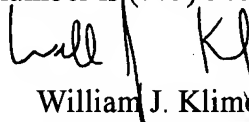
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hoa T. Nguyen can be reached on (703) 305-9687. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

  
William J. Klimowicz  
Primary Examiner  
Art Unit 2652

WJK